

STATE OF MICHIGAN
COURT OF APPEALS

In re MCCASKILL/LEWIS, Minors.

UNPUBLISHED
October 23, 2014

No. 319049
Wayne Circuit Court
Family Division
LC No. 04-429505-NA

Before: FITZGERALD, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Respondent-mother appeals as of right an order terminating her parental rights to three of her minor children pursuant to MCL 712A.19b(3)(c)(i) (the conditions that led to the adjudication continue to exist), (3)(g) (failure to provide proper care or custody), and (3)(j) (reasonable likelihood that child will be harmed if returned to parent). We affirm.

Respondent first argues that the Department of Human Services (DHS) failed to make reasonable efforts to reunify her with her children. We disagree. In order to preserve for appellate review a challenge to the DHS's efforts toward reunification, a respondent must "object or indicate that the services provided . . . were somehow inadequate." *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Respondent failed to do so; therefore, this issue is unpreserved, and our review is for plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8-9; 761 NW2d 253 (2008).

Pursuant to MCL 712A.19a(2), if a child remains in foster care and parental rights to the child have not yet been terminated, "[r]easonable efforts to reunify the child and family must be made." "While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248.

It is clear from the evidence presented that the DHS provided reasonable services to respondent, but respondent failed to participate or demonstrate that she sufficiently benefited from the services. *In re Frey*, 297 Mich App at 248. Respondent's main claim on appeal is that she required intensive mental health services because of her schizophrenia, and the DHS's failure to provide her with these intensive services constituted a failure of its duty. However, at trial a foster care worker testified that the DHS attempted to provide respondent with intensive mental health services to assist in her recovery, but respondent declined any further mental health services, let alone more intensive services. It was not until respondent absolutely declined further mental health services that the DHS and the medical providers closed respondent's case.

Respondent has provided no evidence that the DHS failed to provide her the services she required to achieve reunification with her children.

Respondent next argues that the trial court committed clear error by finding that termination of respondent's parental rights was in the children's best interests. We disagree. "We review for clear error the trial court's determination regarding the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Likewise, "[w]e review for clear error whether the trial court failed to address a significant difference between each child's best interests." *Id.* at 716. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

Whether termination of parental rights is in the child's best interests must be proved by a preponderance of the evidence. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 42; 823 NW2d 144 (2012) (internal citations omitted).

Respondent first argues that the trial court erred by finding that termination was in the children's best interests because respondent had a strong bond with each of the children. The children's bond with respondent is but one factor that may be considered in a best-interests determination. *In re Olive/Metts*, 297 Mich App at 41-42. Though each of the children did state their desire to return to respondent's custody, and the parent-child bond with each of the children is strong, the other factors, i.e., respondent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home, supported termination. Two caseworkers both testified that respondent exhibited some behaviors that indicated that she was not regularly taking her medications, could not maintain suitable housing for prolonged periods of time, and once had to be removed from her sister's home (where the children had been placed, initially) because she had attacked the children, injuring one of them. Further, the children were all doing very well in their foster homes. Respondent's strong bond with her children was clearly outweighed by her failure to maintain housing, to care for her own mental health issues, to maintain contact with the children, or to participate in her case service plan.

Respondent also argues that the trial court committed clear error by finding that termination was in the children's best interests because relatives were willing to care for the children. Although relatives were willing to take the children, the DHS's investigation into suitable placement possibilities with relatives returned with no viable options. A relative's mere desire to take the children is insufficient if their living situation is found unsuitable for the children. Further, when the children were previously placed with a relative, respondent began secretly living with the children until an altercation led to the children's placement in foster care.

Finally, respondent argues that the trial court erred because it failed to expressly address the fact that the children had special needs and desires for not wanting termination. Respondent claims that the trial court had a duty to address the best interests of each child individually.

However, a trial court is only required to address the best interests of the individual children if they “*significantly* differ.” *In re White*, 303 Mich App at 715-716. Nevertheless, the trial court accounted for the best interests of each child separately, and found that there were no significant differences between the children’s interests. The trial court found that all of the children were at risk of danger due to respondent’s mental state and needed permanency. Therefore, the trial court did not commit clear error by finding, by a preponderance of the evidence, that termination of respondent’s parental rights was in the children’s best interests.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Donald S. Owens